

Message Text

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FOR THE LEGAL ADVISER FROM SCHWEBEL

E.O. 11652: N/A
TAGS: PGOV, OTRA
SUBJECT: TRANSMITTAL OF IDEAS RE BROADBENT CASE

1. ERIC SUR, UNDER SECRETARY AND LEGAL COUNSEL OF UN, TODAY HANDED ME FOLLOWING MESSAGE FROM HIS NY OFFICE.
2. QUOTE. RE BROADBENT VS OAS (SUIT BY 7 EX-OAS STAFF MEMBERS FOR BREACH OF CONTRACT DUE TO THEIR TERMINATION FOR REDUCTION OF FORCE). COURT OF APPEALS FOR DC CIRCUIT, TO WHICH PLAINTIFFS HAVE APPEALED DISTRICT COURT'S DISMISSAL OF SUIT BECAUSE OF OAS' TREATY IMMUNITY, ON 19 JUNE INVITED UNITED STATES TO PARTICIPATE AS AMICUS IN APPEAL AND REQUESTED TO BE INFORMED WITHIN 20 DAYS WHETHER AND ON WHICH SIDE IT WOULD PARTICIPATE. STATE AND JUSTICE DEPARTMENTS HAVE REQUESTED AN EXTENSION TO ANNOUNCE THEIR POSITION UNTIL 24 JULY. AS THIS INDICATES UNCERTAINTY AS TO U.S. POSITION, SUGGEST YOU DISCUSS THIS QUESTION WITH MR. SCHWEBEL AND ASK HIM TO INTERVENE WITH STATE DEPARTMENT LEGAL ADVISER IN VIEW OF IMPORTANCE UN AND OTHER IGO-S ATTACH TO THIS CASE. YOU MIGHT POINT OUT THAT IN VIEW OF UNCERTAIN INTERPRETATION 1945 INTERNATIONAL ORGANIZATIONS IMMUNITIES ACT IN LIGHT OF 1976 FOREIGN SOVEREIGNS IMMUNITIES ACT (FSIA), STRONGEST ARGUMENT FOR

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OAS (WHICH WAS ACCEPTED BY DISTRICT COURT IN ITS REVISED ORDER NOW BEING APPEALED) IS THAT DENIAL OF IMMUNITY WOULD VIOLATE ITS TREATY RIGHTS; HOWEVER PLAINTIFFS HAVE ALREADY ARGUED THAT NON-INTERVENTION OF STATE DEPARTMENT IN DISTRICT COURT PROCEEDING INDICATED THAT NO TREATY QUESTION INVOLVED. YOU MIGHT ALSO RECALL THAT LEGAL ADVISER HAD IN A LETTER OF 10 NOVEMBER 1976 TO ATTORNEY GENERAL (41

FEDERAL REGISTER 50883, 75 DEPT STATE BULL 649)

UNDERTAKEN TO INTERVENE IF A COURT SHOULD MISCONSTRUE
1976 FSIA. URGENCY IMPORTANT BECAUSE OF EXPIRATION EX-
TENDED DEADLINE FOR U.S. RESPONSE NEXT MONDAY. UNQUOTE.

3. I HAVE NOT FOLLOWED BROADBENT V. OAS NOR FSIA CLOSELY
BUT WHEN CONSULTED BY VILAPLANA BEFORE DISTRICT COURT
DECISION I TOOK POSITION THAT IT WOULD MAKE NO SENSE TO
PERMIT STAFF MEMBERS OF INTERNATIONAL ORGANIZATIONS TO
SUE THOSE ORGANIZATIONS IN U.S. COURTS. I DO NOT BELIEVE
THAT FSIA MEANT TO ALLOW SUCH SUITS; IF IT DID, IT WAS
ERRONEOUSLY CRAFTED. THE IMMUNITIES OF INTERNATIONAL
ORGANIZATIONS, WHICH THEY REQUIRE FOR THEIR EFFECTIVE
FUNCTIONING, WOULD BE PREJUDICED BY SUCCESS OF BROADBENT,
EVEN THOUGH DISTINCTIVELY WEAKER LEGAL SITUATION OF OAS
MAY BE DISTINGUISHED FROM UN IMMUNITIES. INTERNATIONAL
ORGANIZATIONS CHARACTERISTICALLY AFFORD THEIR OFFICIALS
GENEROUS JOB SECURITY AND APLE DUE PROCESS. THERE IS NO
EQUITABLE NEED FOR EMPLOYMENT DISPUTES OF SUCH ORGANI-
ZATIONS TO BE LITIGATED IN U.S. COURTS. TO EXTENT THEY
ARE, EXCLUSIVELY INTERNATIONAL CHARACTER OF RESPONSIBILI-
TIES OF SECRETARIES GENERAL, WHICH USG BY TREATY IS
OBLIGED TO RESPECT, WILL BE PREJUDICED.

4. FOR REASONS NOTED IN PARAS. 2 AND 3 OF THIS MESSAGE,
I RECOMMEND THAT USG PARTICIPATE IN BROADBENT CASE AS
AMICUS ON SIDE OF OAS. VANDEN HEUVEL
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